

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI

EVERETT W. WHISMAN, et al., :
Plaintiffs :
-v- : Case No. C-1-02-406
: (Judge Beckwith)
: (Magistrate Sherman)
ZF BATAVIA, LLC, et al., :
Defendants :

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The deposition of **JEFFREY M. HOWARD**, taken before Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, at the Holiday Inn Eastgate, 4501 Eastgate Boulevard, Cincinnati, Ohio, on the 3rd day of October, 2003, beginning at the hour of 10:29 a.m. and ending at 10:56 a.m. of the same date.

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APPEARANCES:

FOR THE PLAINTIFFS: STEPHEN A. SIMON, Esq.
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Cincinnati, Ohio 45202

FOR THE DEFENDANTS: JOHN J. HUNTER, JR., Esq.
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1700 Canton Avenue
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JEFFREY L. VANWAY, Esq.
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ALSO PRESENT: MR. EVERETT W. WHISMAN
MR. GARY VORIES
MR. HERBERT HUEBNER

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STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of **JEFFREY M. HOWARD**, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

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1 **JEFFREY M. HOWARD**, called as a witness, being first
2 duly sworn, testified as follows:

3 BY MR. SIMON:

4 Q Could you state your full name for the
5 record?

6 A Jeffrey M. Howard.

7 MR. SIMON: Mr. Howard, we just met
8 moments ago. My name is Steve Simon. I'm an
9 attorney for the plaintiffs in this lawsuit.
10 Two of them are sitting to my left, Gary Vories
11 and Wayne Whisman. Do you know those two
12 gentlemen?

13 THE WITNESS: Yes.

14 MR. SIMON: And we represent a total of
15 15 salaried employees that are Ford
16 transitional employees that have sued ZF
17 Batavia and Ford Motor Company.

18 What you're doing now is taking a
19 deposition in connection with that lawsuit.
20 Have you ever had your deposition taken before?

21 THE WITNESS: No.

22 MR. SIMON: Just so you understand, I'm
23 going to be asking you questions, you're going
24 to be answering under oath. The court reporter
25 is going to be taking down what you say and a

1 transcript will be produced. And basically if
2 you don't understand a question I ask, can you
3 just ask me to rephrase or re-ask and I'll be
4 glad to do it.

5 THE WITNESS: Okay.

6 MR. SIMON: Just make sure you speak up
7 good and loud enough so the court reporter can
8 take it down and that's all you really need to
9 do.

10 THE WITNESS: Okay.

11 BY MR. SIMON:

12 Q What is your current position, sir?

13 A Senior asset protection officer at ZF
14 Batavia.

15 Q How long have you worked for ZF
16 Batavia?

17 A Transitioned in '99, October of '99. I
18 was there six years prior to that. I started actually
19 with Ford at Batavia in '93.

20 Q Are you hourly?

21 A No, I'm salaried.

22 Q Were you salaried at Ford?

23 A Yes. We were exempt salaried, but
24 yeah, I was salaried.

25 Q So you're a Ford transitional employee?

1 A Yes.

2 Q And what are your job duties?

3 A Basically day shift security
4 responsibilities. Basically safety, security, first
5 responders. Basically if there's an emergency, we
6 respond, any type of emergency.

7 Q You work in the security area, right?

8 A Yeah. I'm responsible for basically
9 the -- a lot of the people that we have in that
10 department, wherein we do not have a salaried
11 supervisor. I'm in a position where I don't
12 discipline, but I'm in a supervisory-type -- we're
13 union, so I can't really tell someone, but more or less
14 I'm responsible for what happens out there.

15 Q The area we're talking about is
16 security, correct?

17 A Yes.

18 Q And the other people that you don't
19 directly supervise, these are security guards?

20 A Yes, yes.

21 Q And I understand that there are
22 electronic readers set up outside the plant gates.

23 A Right.

24 Q What are your duties in connection with
25 that?

1 A Basically just to maintain them.

2 Periodically we are asked to run reports.

3 Q What kind of reports?

4 A More or less entering and leaving. For
5 hourly people it's more entering. They don't scan out,
6 so salaried are required to scan out.

7 Q You said salaried. That includes Ford
8 transitional salaried people, right?

9 A I believe so, yeah.

10 Q And that includes people who actually
11 still work for Ford currently; they also scan out?

12 A I -- I couldn't answer that. I would
13 assume, but I'm just assuming.

14 Q All right. And kind of just explain
15 something. What's the process of using these
16 electronic readers?

17 A As far as just how to access the
18 building or --

19 Q Yeah. What does somebody have to do?

20 A You just -- you've got a badge on your
21 hip and generally -- we give you a pull string. You
22 just wave it and it clicks. More or less, it's a
23 turnstile that allows you to enter the -- enter the
24 premises.

25 Q All right. And getting back to the

1 reports, have people asked you to produce reports of
2 when a given employee has entered and left the
3 facility?

4 A Sure.

5 Q I mean, that's the purpose why somebody
6 would ask for the report, right?

7 A Yes.

8 Q And who would be actually asking you to
9 do this report?

10 A Anybody can ask us, but the only time
11 we're allowed to run them, if it's from HR or our
12 manager, Marty Robbins.

13 Q Has anyone from HR or Mr. Robbins asked
14 you to run a report for a salaried employee?

15 A Yes.

16 Q And you've been there continuously at
17 ZF Batavia since the joint venture started in '99,
18 correct?

19 A Yes.

20 Q Who have you run reports on?

21 A To recall, there are so -- I can't
22 recall everybody.

23 Q If you can. I just --

24 MR. HUNTER: Steve, do you want just
25 salaried or are you looking for hourly?

1 MR. SIMON: Just salaried.

2 THE WITNESS: Salaried people. I can
3 recall Gary.

4 BY MR. SIMON:

5 Q Gary Vories?

6 MR. HUNTER: I want to place an
7 objection here. To the extent, Jeff, that you
8 ran reports for me --

9 THE WITNESS: Okay.

10 MR. HUNTER: -- those reports would not
11 --

12 THE WITNESS: There was a group of a
13 dozen, dozen and a half not too long ago which
14 I found out later that was upon request of John
15 that I ran.

16 BY MR. SIMON:

17 Q Putting that aside then, the recent
18 request, Mr. Howard, have you run a report on Mr.
19 Vories otherwise?

20 A No, no. No, I haven't.

21 Q Okay. Do you recall any other names?

22 A We do periodically run reports on a
23 salaried individual if they come to us the 15th of the
24 month and at the end of the month, simply upon their
25 request, "I haven't written -- I didn't document all my

1 times from my time sheet." And it was simply coming
2 from the -- the salaried employee, saying -- you know,
3 Don Williams was one name that pretty continuously he
4 doesn't document, I guess, his times very closely, so
5 he'll ask us to run a report simply to double-check or
6 verify that he's got -- I guess that's he putting down
7 the correct times.

8 Q Well, what conversations have you had
9 with Mr. Williams about this?

10 A Oh, it's just he'll -- he'll call
11 someone out in the office and say can I have my times
12 for, you know, this pay period.

13 Q And he wants you to run off these
14 reports?

15 A Right.

16 Q And these are called trail reports?

17 A Group card trail, yeah, reports.

18 Q Has Mr. Williams told you why he wants
19 them?

20 A He just hasn't filled out his time
21 sheet.

22 Q Did he tell you he hadn't filled out
23 his time sheet?

24 A Well, he -- he tells us he has to have
25 his time so he can fill out his time sheet.

1 Q Somebody told you that Don Williams
2 said that?

3 A Yes.

4 Q Do you remember who told you that?

5 A One of the guards. One of the guards.

6 Q Do you remember who?

7 A It's so often, he could have possibly
8 asked everybody out there. Again, it's a regular
9 basis, every two weeks, every two and a half weeks,
10 every pay period he's asking for those.

11 Q And there's other salaried employees
12 who also have asked for this report?

13 A Yes. I believe so, yeah.

14 Q All right. Putting aside those
15 situations where somebody apparently is asking you to
16 do it because that employee wants to look at his own
17 report --

18 A Right.

19 Q -- have there been other instances
20 where someone told you "I want you to run a report on
21 this one," and it was your understanding that the
22 reason the report was being run is that that person's
23 supervisor wanted to see if the person was in the
24 building?

25 A Yes, there has been -- there has been

1 some of those times.

2 Q Was Sandy Moore one?

3 A I believe so, yes.

4 Q Did you run the report?

5 A I probably did. This was -- this could
6 have been a couple years ago.

7 Q Did you ever run a report for Renard
8 South?

9 A I'm sure I did. I'm sure I did.

10 Q Victor Flanagan?

11 A The name doesn't ring a bell.

12 Q How about Dave Osborne?

13 A No, not that I recall. No.

14 Q You said Renard South you're sure you
15 did.

16 A Mm-hmm.

17 Q Do you remember who told you to run a
18 report on Renard South?

19 A Again, there's so -- there's so many
20 times we're requested, not only salaried but hourly
21 too, it's hard for me -- it had to have come either
22 from Marty or someone in HR through Marty.

23 Q Who would primarily be your contact
24 person in HR for this report?

25 A Generally Cyril.

1 Q Who?

2 A Generally Cyril.

3 Q What's that person's full name?

4 A Puthoff, Cyril Puthoff.

5 Q Did you ever talk to Mr. Huebner about
6 running a report?

7 A Not directly, no. No.

8 Q Mr. Sennish?

9 A No.

10 Q Anybody else besides Mr. Puthoff that
11 you recall?

12 A Not that I can recall, no.

13 Q Using Renard South as an example, do
14 you remember what the -- did anyone tell you what the
15 reason was that they wanted to run a report on Renard
16 South?

17 A They generally, don't. No, with Renard
18 I don't recall them ever saying what the reason. They
19 just simply, more or less, request, you know, we need
20 some swipes they call them, swipes on whatever
21 individual.

22 Q And is it your understanding that when
23 this request is made such as, for example, for Mr.
24 South, that the reason for the request is someone in HR
25 or someone in management wants to check the group card

1 trail reports against that individual's time sheets?

2 A Assuming, yeah, I'd say yes. Just an
3 assumption, yes.

4 Q What's that assumption based on?

5 A I don't know why else they would need
6 it, to be honest with you.

7 Q You can't think of another reason?

8 A No, not really.

9 Q How often just, let's say, per month in
10 the last year do you get a request from Marty Robbins
11 or someone in HR that they want you to run a group card
12 trail report for a salaried employee, putting aside the
13 situation where somebody is asking for their own
14 report? How many times a month?

15 A Even if it was less -- I'd say no more
16 than once a month. No more than once a month and that
17 would be an average of the year. I mean, I don't think
18 -- I don't think I've been requested really to run 12
19 in the last year for a salaried individual.

20 Q Maybe 12 in the last year?

21 A Maybe, yes. That's stretching it.

22 Q Had there been a period at any time in
23 the last four years where that frequency has been
24 greater?

25 A It was a -- there was a production -- I

1 don't know if he's a supervisor, a manager on the floor
2 in CVT, Karl -- I don't recall his last name --
3 Kontyko, Karl Kontyko, I believe Ray Pugliese has asked
4 us through Marty to run him there for about four
5 months, you know, pretty regular. I think we were
6 running him at least once a month. And that's kind of
7 fallen away. We haven't ran him for it's been at least
8 three months now. So it's just sporadically. It just
9 depends on what's -- you know, what they want or what
10 they're asking for.

11 Q Did anyone explain why Mr. Pugliese
12 wanted that report run for Mr. Kontyko?

13 A I believe I was just told that he
14 wasn't -- they didn't know where he was, couldn't keep
15 track of him.

16 Q Who was they?

17 A I don't know whether it was Ray or it
18 was Marty, one of the two.

19 Q After you run off the report, who do
20 you give it to generally?

21 A Generally Marty. We will -- we have
22 the printer set up right to his office, so we simply
23 run the report, make sure the information is there and
24 we print it right to his desk.

25 Q I'm going to have you look at a

1 document, Exhibit 16, Mr. Howard. I'm showing you a
2 document that's marked as Exhibit 16 in this case, Mr.
3 Howard. Putting aside the exhibit stamp on that and
4 the number next to that, have you seen that document
5 before?

6 A I believe so, yes.

7 Q Does it reflect that it's a notice that
8 apparently was put out August 29th, 2001 --

9 A Yes.

10 Q -- about two years ago? When have you
11 seen that notice before today?

12 A I believe it was posted in the plant on
13 our boards at one point. I don't know if they're still
14 posted there or not, but they were at one point.

15 Q Okay. It's your understanding that
16 beginning on August 29th -- and that date may not by
17 itself be significant to you, but it is your
18 understanding that in the last couple years salaried
19 employees have been required to swipe in with a card
20 when they enter the plant and swipe out when they exit
21 the plant?

22 A Yes, that's -- that's what I've been
23 told. Yes.

24 Q And after this notice came out, is that
25 when you started to get requests from HR or Mr. Robbins

1 to check -- to produce these card trail reports?

2 A I don't know if it had got any more
3 frequent than it was at the beginning. I don't -- I
4 don't think so. Not that I can recall anyway.

5 Q Before people had to swipe out to exit,
6 your trail report would only show when someone entered
7 the building, right?

8 A Correct.

9 Q So they could enter the building at
10 7:00 in the morning, their time sheet would say 7:00 in
11 the morning; however, they could leave early and that
12 leaving early wouldn't be reflected on the report,
13 correct?

14 A Correct.

15 Q Did anyone ever explain to you that
16 because they now have to exit, your trail report is
17 going to be a better reflection of whether they're
18 actually in the plant? Did anyone have that kind of
19 discussion with you?

20 A No. No, never -- never has come up.

21 Q Did anyone ever explain to you why
22 salaried employees beginning on August 29th, 2001 had
23 to swipe out with a card when they exited the plant?

24 A I was told, and I believe this was from
25 Marty, this was -- this was the plan to get to where we

1 could get the hourly eventually -- we had to kind of,
2 you know, set the -- the tone for it, but we were to
3 eventually get the hourlies also to scan in and out,
4 more or less as a timekeeping-type system.

5 Q You had mentioned there are some
6 turnstiles at various entrances in the plant.

7 A Mm-hmm.

8 Q I guess there's one on the south side;
9 there's a main employee entrance?

10 A Yes. That would be our gate, yes.

11 Q Okay. And there's also a northeast
12 guard shack where there's a turnstile?

13 A Correct, yes.

14 Q The procedure then is to get out of the
15 plant the employee has to walk through the turnstile
16 and then when they leave, they have to engage the
17 reader once they're outside the turnstile, correct?

18 A For salaried employees, yes. Yes.

19 Q And by doing that, it's my
20 understanding that if somebody from the outside walks
21 in at that moment, they actually don't have to engage
22 the reader to get in the turnstile?

23 A There's a time setting, a time-out
24 delay on that. I think it's six seconds or so. But
25 yes, there's a chance that they can get in on that

1 swipe.

2 Q All right. Obviously if the person
3 didn't have to engage the reader when they went through
4 the turnstile or just chose not to do it, there would
5 be no possibility for someone to come in in that six
6 seconds if they didn't have a card, right?

7 A Run that by me one more time.

8 Q If someone leaves the plant, they go
9 through through that turnstile, they don't engage the
10 reader with a card, that turnstile is locked, right?

11 A Yes.

12 Q As opposed to if someone engages the
13 reader, there's, you said, maybe a six-second
14 opportunity for someone to come in through the
15 turnstile without a card?

16 A Yes. There's a chance, yes.

17 Q Have you had any other conversations
18 with Mr. Robbins or HR about this issue about producing
19 trail reports with respect to salaried employees that
20 you already haven't testified about?

21 A No. We did -- I talked to Marty just
22 this past week as far as running them upon request of
23 the employee, the salaried employee, and he told me as
24 of Monday I believe he wanted to more or less -- we're
25 getting more requests for these and as busy as we are,

1 as of Monday they're going to have to go through HR,
2 specifically Herb, to get these requests, even if it's
3 -- they come to you and say "It's just for my time
4 sheet. I need to verify." Because, again, we're
5 getting too -- we're getting too many requests and, to
6 be honest with you, everybody else is pretty good about
7 filling out their time sheets. It's -- I think it's
8 just a bad habit that they've started.

9 MR. SIMON: Off the record.

10 (OFF THE RECORD)

11 MR. SIMON: We're back on the record.

12 BY MR. SIMON:

13 Q Mr. Howard, are there other people in
14 the security area who can run these reports besides
15 yourself?

16 A Yes.

17 Q And as far as you know, do other people
18 run these reports?

19 A Yes.

20 Q Who else runs these reports?

21 A Everyone that works out in that office
22 is capable of running these reports.

23 Q So how many people is that?

24 A We have eight total out in that
25 department. This is specifically guards.

1 Q If Mr. Robbins wants to have a report
2 run, can he do it from his office or does he have to
3 ask you or one of these other people?

4 A He has to have somebody else run it,
5 one of us.

6 Q Is there any reason that people would
7 come to Jeff Howard and not these other eight people to
8 have these reports run?

9 A Well, again, this is just an
10 assumption. I'm, at least on day shift, one of the
11 more predominant names. And that's the only -- that's
12 just an assumption. That's the only reason I can think
13 of.

14 Q And, in fact, do you know if people
15 come to you more often than other security people to
16 run these reports?

17 A No. I don't know that for sure, no.

18 Q And the eight people, does that include
19 also people on other shifts?

20 A Yes, yes.

21 Q Well, is it possible that if you're
22 doing about, you said, maybe 12 of these reports a year
23 -- and, again, the reports we're talking about are
24 salaried employees, where someone from HR or Mr.
25 Robbins says we want to run a report on that person.

1 Do you follow me?

2 A Mm-hmm.

3 Q Right?

4 A Yes.

5 Q And you had said that that may be about
6 12 a year, correct?

7 A Yes.

8 Q Is it possible that these other eight
9 people are also doing about 12 a year?

10 MR. HUNTER: Objection. Lack of
11 foundation. It calls for complete speculation.
12 To the extent, Jeff, that you have any idea,
13 you can answer.

14 THE WITNESS: I agree.

15 BY MR. SIMON:

16 Q Do you have any reason to believe that
17 the other eight people are doing these reports less
18 frequently than you?

19 A No, I have no reason to believe that.
20 No.

21 MR. SIMON: I have no further
22 questions.

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(AND FURTHER THE DEPONENT SAITH NAUGHT)

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Jeffrey M. Howard

C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF OHIO,

COUNTY OF HAMILTON, To-wit;

I, Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, do hereby certify;

That on the 3rd day of October, 2003, there appeared before me pursuant to Notice and agreement of counsel, **JEFFREY M. HOWARD**, as a witness in the previously entitled cause;

That the said witness was sworn by me and examined to tell the truth, the whole truth, and nothing but the truth in said cause;

That the deposition was taken by me via Stenomask and electronic recording and the foregoing 22 pages contain a true, full and correct transcription of all the testimony of said witness;

That the deposition was submitted to counsel for the witness for reading and signature;

That I am not related to or in any way associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October, 2003.

Susan K. Lee, CVR-CM
My commission expires:
August 30, 2004